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NEW YORK LIFE INSURANCE COMPANY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ISABEL ADAMS, an individual,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE
COMPANY, a New York corporation;
DOES 1 to 20,

Defendants.

CASE NO.: 2:22-cv-4103

*[Removed from Los Angeles Superior Court,
Case 21STCV39816]*

**DEFENDANT NEW YORK LIFE
INSURANCE COMPANY'S NOTICE
OF REMOVAL OF ACTION TO
FEDERAL COURT PURSUANT TO 28
U.S.C. §§ 1331, 1332, 1367, 1441, and
1446**

Complaint Filed: October 28, 2021

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF ISABEL ADAMS,
AND HER ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT Defendant NEW YORK LIFE INSURANCE
COMPANY ("Defendant") hereby invokes this Court's jurisdiction under the provisions
of 28 U.S.C. sections 1331, 1332, 1367, 1441(a) and 1441(b) to remove this action from
the Superior Court of California for the County of Los Angeles based on federal question
and diversity jurisdiction. In support thereof, Defendant asserts the following:

1 **I. FEDERAL QUESTION AND DIVERSITY JURISDICTION**

2 1. This Court has original jurisdiction over the matter pursuant to 28 U.S.C.
3 sections 1331, 1367, and 1441 and may be removed pursuant to section 1446 because this
4 action arises, at least in part, under federal law—Title VII of the Civil Rights Act of 1964
5 (“Title VII”), 42 U.S.C. §§ 2000e, *et seq.* and 42 U.S.C. § 1981 *et seq.*

6 2. The Court also has original jurisdiction over this matter pursuant to 28
7 U.S.C. sections 1332 and 1441. This case may be removed pursuant to 28 U.S.C. sections
8 1332, 1441, and 1446 because it is a civil action between citizens of different states, and
9 the amount in controversy exceeds \$75,000.00 as to Plaintiff, exclusive of interest and
10 costs.

11 **II. TIMELINESS OF REMOVAL**

12 3. On or about October 28, 2021, Plaintiff ISABEL ADAMS (“Plaintiff”) filed
13 an action against Defendant titled “ISABEL ADAMS, an individual, Plaintiff vs. NEW
14 YORK LIFE INSURANCE COMPANY, a New York corporation; DOES 1 to 20,
15 Defendants,” in the Superior Court of the State of California, County of Los Angeles -
16 Central District, Case No.: 21STCV39816. (the “State Court Action.”). (Declaration of
17 Elisabeth F. Whittemore (“Whittemore Decl.” ¶ 2, Exh. A.) In the Complaint, Plaintiff
18 asserts the following causes of action: (1) Hostile Work Environment [Title VII of the
19 Civil Rights Act of 1964]; (2) Discrimination [Title VII of the Civil Rights Act of 1964];
20 (3) Retaliation [Title VII of the Civil Rights Act of 1964]; (4) Wrongful Termination
21 [Title VII of the Civil Rights Act of 1964]; (5) Hostile Work Environment Based on Race
22 [42 U.S.C. § 1981]; (6) Wrongful Termination [California Civil Code § 51]; (7)
23 Retaliation [Labor Code § 1102.5]; (8) Interference With Contract; (9) Interference With
24 Prospective Economic Advantage; and (10) Unfair Business Practices. (*Id.*)

25 4. On April 25, 2022, Defendant was provided with the Summons and
26 Complaint along with the Notice of Acknowledgment of Receipt. (*Id.* at ¶ 4, Exh. A.)
27 Defendant returned the Acknowledgment of Receipt on May 16, 2022. (*Id.* at ¶ 5, Exh.
28 B.) *See Murphy Bros., Ins. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 349 (1999)

1 (holding that the removal deadline is triggered by the official service date assuming it can
2 be ascertained from the complaint that the matter is removable).

3 5. On June 14, 2022, Defendant filed its Answer to the Complaint in the
4 Superior Court of California, County of Los Angeles. (*Id.* at ¶ 6, Exh. C.)

5 6. As of the date of this Notice of Removal, the Summons and Complaint,
6 along with the Notice of Acknowledgment of Receipt – Civil, Notice of Case
7 Assignment, Civil Case Cover Sheet, Notice of Confirmation of Electronic Filing, and
8 Notice of Case Management Conference, constitute all of the pleadings received or filed
9 in this matter and no further proceedings have been had in the state court as of June 14,
10 2022. (*Id.* at ¶ 7.)

11 7. This removal is timely because it has been filed within thirty (30) days after
12 Defendant was effectively served on May 16, 2022, and it is therefore filed within the
13 time period mandated by 28 U.S.C. section 1446(b). The United States Supreme Court
14 has held that the 30-day removal deadline is triggered by actual service, as opposed to
15 receipt of the complaint through other means. *Murphy Bros., Ins. v. Michetti Pipe*
16 *Stringing, Inc.*, 526 U.S. 344, 349 (1999).

17 **III. VENUE IS PROPER**

18 8. A “civil action brought in a State court of which the district courts of the
19 United States have original jurisdiction, may be removed by the defendant[s] . . . to the
20 district court of the United States for the district and division embracing the place where
21 such action is pending.” 28 U.S.C. § 1441(a). Plaintiff filed the Complaint in Superior
22 Court of California for the County of Los Angeles. Venue of this action, thus, lies in the
23 United States District Court for the Central District of California—Western Division as
24 this district “embrac[es] the place where” the state action is pending. 28 U.S.C. §
25 1441(a).

26 **IV. REMOVAL BASED ON FEDERAL QUESTION JURISDICTION**

27 9. This Court has original jurisdiction of this action pursuant to 28 U.S.C.
28 sections 1331, 1367, and 1441(a) and (c), because the Complaint is a civil action arising

1 under the laws of the United States. Specifically, Plaintiff claims Defendant violated Title
2 VII of the Civil Rights Act of 1964 in connection with the first, second, third, and fourth,
3 causes of action for Hostile Work Environment in violation of Title VII, Discrimination
4 in violation of Title VII, Retaliation in violation of Title VII, and Wrongful Termination
5 in violation of Title VII, respectively. (Whittemore Decl., Exh. A, ¶¶ 12–43.) Plaintiff
6 further alleges Defendant violated 42 U.S.C. § 1981 in connection with the fifth cause of
7 action. (*Id.* at ¶¶ 45–56.)

8 10. Because Plaintiff alleges violations of Title VII and 42 U.S.C. § 1981 on the
9 face of her Complaint, and because Title VII and 42 U.S.C. § 1981 are federal law, the
10 Complaint presents a “federal question.” *See Holmes Grp, Inc. v. Vornado Air*
11 *Circulation Sys., Inc.*, 535 U.S. 826, 830 (2002) (whether a case “arises under” federal
12 law for original jurisdiction purposes is tested by the “well-pleaded complaint” rule
13 which requires federal courts to consider only what necessarily appears in plaintiff’s
14 statement of his claim); *see also Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998)
15 (whether the claim “arises under” federal law for removal purposes is determined by the
16 same “well-pleaded complaint rule” that determines original federal question
17 jurisdiction). Accordingly, this is an action of a civil nature in which the district courts of
18 the United States have been conferred original jurisdiction in that it arises under the laws
19 of the United States as provided in 28 U.S.C. section 1331.

20 11. Pursuant to 28 U.S.C. sections 1367(a) and 1441(c), this Court has
21 supplemental jurisdiction over Plaintiff’s additional causes of action under California law
22 as they all arise from the same nucleus of operative facts (*i.e.*, the same transactions or
23 occurrences), namely, Plaintiff’s purported employment relationship with Defendant. *See*
24 *e.g., United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966), superseded by
25 statute on other grounds as stated in, *Exec. Software N. Am., Inc. v. US. Dist. Ct. for Cent.*
26 *Dist. of Cal.*, 24 F.3d 1545 (9th Cir. 1994) (holding that, absent unusual circumstances,
27 where claims based on federal law have a “common nucleus of operative fact” with those
28 alleged under state law, federal courts should exercise supplemental jurisdiction over the

1 state law claims); *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1070 (9th Cir. 2019)
2 (district courts have “supplemental jurisdiction over all other claims that are so related to
3 claims in the action within original jurisdiction that they form part of the same case or
4 controversy”); *see also Sea-Land Serv., Inc. v. Lozen Int’l*, 285 F.3d 808, 814 (9th Cir.
5 2002) (“Because the federal and state counterclaims arise from the same transaction and
6 rely on identical facts for their resolution, they ‘form part of the same case or controversy
7 under Article III’ for the purposes of supplemental jurisdiction [under 28 U.S.C. §
8 1367(a)].”); *Navarro v. City of Fontana*, Case No. EDCV 09-1525-VAP (DTBx), 2010
9 U.S. Dist. LEXIS 147141 at *5–6 (C.D. Cal. Jan. 6, 2010) (“It would be inefficient to
10 require the California Superior Court to duplicate the work of this Court by becoming
11 familiar with these same facts. Furthermore, the existence of two separate actions relating
12 to the same nucleus of facts would present a risk of inconsistent rulings. Additionally, it
13 would be inconvenient to all parties to be forced to litigate two separate actions relating
14 to the same nucleus of facts.”).

15 12. Indeed, all of Plaintiff’s claims would ordinarily be expected to be tried in
16 one judicial proceeding as evidenced by the fact that Plaintiff’s allegations stem from the
17 same alleged employer/employee relationship and the purported duties and obligations of
18 the employer and employee. *Finley v. United States*, 490 U.S. 545, 549 (1989); *see also*,
19 *Rivero v. Lefeld & Son, LLC*, No. 13-81154-CIV, 2014 U.S. Dist. LEXIS 69090, 2014
20 WL 2095219, at *4 (S.D. Fla. May 20, 2014) (finding a common nucleus of operative
21 fact for state law counterclaim covering a different time period than the federal claim
22 because, like the federal claim, it stemmed “from the employer/employee relationship
23 and the duties and obligations of [the employers and the employee]”); *see also*
24 *Ouedraogo v. Durso Assocs., Inc.*, No. 03 CV 1851(RLC), 2005 U.S. Dist. LEXIS 11954,
25 2005 WL 1423308, at *2 (S.D.N.Y. June 16, 2005) (finding employees’ claims shared a
26 common nucleus of operative fact because although some of the state claims occurred at
27 different time periods than the federal claims, they nonetheless shared “too many
28 common threads” because they involved “overlapping testimony, depositions and

documentation”).

13. Based on the above, Defendant’s removal of the Complaint to this Court is proper pursuant to 28 U.S.C. section 1441(a) because this Court has original jurisdiction over the action pursuant to 28 U.S.C. section 1331 and supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. section 1367(a).

V. REMOVAL BASED ON DIVERSITY JURISDICTION

14. The Complaint and all causes of action alleged therein may be properly removed on the basis of diversity jurisdiction, in that this is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332.

A. Complete Diversity Exists Between Plaintiff and Defendant

15. Plaintiff is now, and at the time this action commenced, a citizen of the State of California within the meaning of U.S.C. section 1332(a). Plaintiff’s residence and domicile are, and were, located within the state of California, County of Los Angeles. (Whittemore Decl., ¶ 3, Exh. A. p 11, ¶ 3); *see also, Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“A person’s domicile is her permanent home, where she resides with the intention to remain to which she intends to return.”); *Mondragon v. Capital One Auto Finance*, 736 F3d 880, 886 (9th Cir. 2013) (“Court should consider ‘the entire record’ to determine whether evidence of residency can properly establish citizenship.”).)

16. If a party is a corporation, it is a citizen of both its state of incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010).

17. Defendant is now, and was at all material times, a corporation organized under the laws of the State of New York. (Whittemore Decl., ¶ 8, Exh. D.) Defendant is thus a citizen of the State of New York.

18. Defendant is now, and was at all material times, headquartered in New York, New York. (*Id.*; *see also* Declaration of Christopher Pinchiaroli (“Pinchiaroli

Decl.”), ¶¶ 7–8.) Defendant’s officers and directors are employees whose offices are located at Defendant’s headquarters in New York, New York. (Whittemore Decl., ¶ 8, Exh. D; Pinchiaroli Decl., ¶¶ 7–8.) Defendant performs the vast majority of its executive and administrative functions, including coordinating its nationwide services and overall business operations, at its headquarters in New York, New York. (Whittemore Decl., ¶ 8, Exh. D; Pinchiaroli Decl., ¶¶ 7–8.) Defendant is hence a citizen of the State of New York because its principal place of business is New York, New York. 28 U.S.C. § 1332(c); *Hertz Corp. v. Friend*, 559 U.S. at 93 (“[W]e conclude that the phrase ‘principal place of business’ refers to the place where the corporation’s high-level officers direct, control, and coordinate the corporation’s activities.”).

19. Therefore, for the purpose of determining jurisdiction, Defendant was not—and is not—a citizen of the State of California. Rather, it was—and is—a citizen of the State of New York.

20. “Doe” defendants fictitiously named, but not served, are not joined in this Notice of Removal and shall be disregarded for the purpose of determining removal jurisdiction. 28 U.S.C. § 1441(b)(1). In determining whether diversity of citizenship exists, only the named defendants are considered. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690–91 (9th Cir. 1998).

21. Accordingly, with Plaintiff as a citizen of California, and Defendant a citizen of New York, complete diversity of citizenship between the parties exists within the meaning of 28 U.S.C. section 1332.

B. The Amount in Controversy Exceeds the \$75,000 Jurisdictional Minimum

22. The jurisdictional minimum amount that must be in controversy, over \$75,000, was satisfied at the time of the filing of this action and is still satisfied by the facts set forth herein and described more specifically below. 28 U.S.C. § 1332(a) (“[D]istrict courts . . . have original jurisdiction of all civil actions where the matter in controversy exceeds the sums or value of \$75,000, exclusive of interest and costs and is

1 between . . . citizens of different States.”; *see also Matheson v. Progressive Specialty*
2 *Ins., Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Jurisdiction founded on [diversity]
3 requires that the parties be in complete diversity and the amount in controversy exceed
4 \$75,000.”).

5 23. Defendant discusses the allegations in Plaintiff’s Complaint solely to
6 demonstrate that the amount in controversy in this matter exceeds \$75,000. Defendant
7 denies that Plaintiff is entitled to any damages and denies that Plaintiff will be able to
8 recover on any of her legal theories.

9 24. In assessing the amount in controversy, this Court may, for removal
10 purposes, look to the removal papers and the pleadings, as well as summary judgment
11 type evidence. *Chavez v. JP Morgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018);
12 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 908 (9th Cir. 2005); *Singer v. State Farm Mut.*
13 *Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
14 (9th Cir. 1992).

15 25. A defendant need only establish by a preponderance of the evidence that it is
16 more probable than not that the plaintiff’s claimed damages exceed the jurisdictional
17 minimum. *See* 28 U.S.C. § 1446(c)(2)(B); *Sanchez v. Monumental Life Ins. Co.*, 102
18 F.3d 398, 405–04 (9th Cir. 1997).

19 26. Here, as addressed above, Plaintiff asserts the following causes of action:
20 (1) Hostile Work Environment [Title VII of the Civil Rights Act of 1964]; (2)
21 Discrimination [Title VII of the Civil Rights Act of 1964]; (3) Retaliation [Title VII of
22 the Civil Rights Act of 1964]; (4) Wrongful Termination [Title VII of the Civil Rights
23 Act of 1964]; (5) Hostile Work Environment Based on Race [42 U.S.C. § 1981]; (6)
24 Wrongful Termination [California Civil Code § 51]; (7) Retaliation [Labor Code §
25 1102.5]; (8) Interference With Contract; (9) Interference With Prospective Economic
26 Advantage; and (10) Unfair Business Practices. (Whittemore Decl., ¶ 2, Exh. A.)

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28 ///

1 **1. The Amount in Controversy is Measured by the Damages and**
 2 **Attorneys’ Fees “At Stake” in the Litigation, to Which Plaintiff**
 3 **Would be Entitled if She Prevails**

4 27. In measuring the amount in controversy for purposes of diversity
 5 jurisdiction, “a court must assume that the allegations of the complaint are true and
 6 assume that a jury will return a verdict for the plaintiff on all claims made in the
 7 complaint.” *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d
 8 993, 1001 (C.D. Cal. 2002) (internal quotations and citations omitted).

9 28. In addition, the Court should aggregate damages in determining whether the
 10 controversy exceeds \$75,000. *Bank of Cal. Nat’l Ass’n v. Twin Harbors Lumber Co.*,
 11 465 F.2d 489, 491 (9th Cir. 1972) (“aggregation is permitted when a single plaintiff seeks
 12 to aggregate two or more of her own claims against a single defendant”) (internal
 13 quotations omitted).

14 29. Further, as instructed by the Ninth Circuit in *Chavez*, “the amount in
 15 controversy is not limited to damages incurred prior to removal—for example, it is not
 16 limited to wages a plaintiff-employee would have earned before removal (as opposed to
 17 after removal)[; but] rather, the amount in controversy is determined by the complaint
 18 operative at the time of removal and encompasses all relief a court may grant on that
 19 complaint if the plaintiff is victorious.” *Chavez*, 888 F.3d at 414–15; *see e.g., Goldberg*
 20 *v. CPC Int’l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982) (attorney’s fees may be taken into
 21 account to determine jurisdictional amount); *Clark v. Nat’l Travelers Life Ins. Co.*, 518
 22 F.2d 1167, 1168 (6th Cir. 1975) (“It is settled that the statutory penalty and a statutory
 23 attorney’s fee can be considered in determining whether the jurisdictional amount is
 24 met.”).

25 30. Here, Plaintiff seeks: 1) **economic damages** for lost wages; 2) **liquidated**
 26 **damages**; 3) **non-economic** damages for emotional distress; 4) **punitive damages**; and
 27 5) **attorney’s fees**, interest, and cost. (Whittemore Decl., ¶ 2, Exh. A., Prayer for Relief.)
 28 Each are discussed in turn.

30. **Lost Wages:** Defendant has a reasonable good faith belief that Plaintiff is seeking damages in excess of the \$75,000 jurisdictional requirement. Plaintiff alleges she “has sustained economic . . . injuries, resulting in damages in an amount to be proven at trial” and thereby seeks “lost wages [and] compensation.” (Whittemore Decl., ¶ 2, Exh. A, ¶¶ 21, 27, 34, 41, 54, 66, 72, 78, 83 and Prayer for Relief, ¶¶ 4, 6.)

31. At the time of her last day working with Defendant, approximately February 24, 2021, Plaintiff was paid commissions of \$81,110.80, or \$6,759.23 per month or \$1,559.82 per week. (Pinchiaroli Decl., ¶ 5.)

32. Under a conservative estimate, any judgment in this case will likely be rendered no earlier than June 2024, or 23.5 months from the date of filing.¹ Therefore, based on the time between when Plaintiff’s contractual relationship with Defendant ended, February 24, 2021, and when her case may be heard, if Plaintiff is successful in her claims against Defendant, she could be entitled to approximately three years of back pay, plus another two years of front pay by the time of trial for a total of **\$405,554** in economic damages (\$81,110.80 per year x 5 years). These damages alone exceed the requisite jurisdictional amount.

33. **Liquidated Damages:** Plaintiff seeks liquidated damages. (Whittemore Decl., Exhibit A, Prayer for Relief, ¶ 5.) Generally, a court may award liquidated damages under 29 U.S.C. section 216(b) in amount equal to that owed plaintiff as unpaid wages. *Russell v. Wells Fargo & Co.*, 672 F. Supp. 2d 1008 (N.D. Cal. 2009); *Bullock v. Pizza Hut, Inc.*, 429 F. Supp. 424 (M.D. La. 1977); *Conklin v. Joseph C. Hofgesang Sand Co.*, 407 F. Supp. 1090 (W.D. Ky. 1975). Should Plaintiff be awarded lost wages—though Defendant contends that Plaintiff should not be awarded any lost wages—that amount would be doubled pursuant to 29 U.S.C. section 216(b). Therefore, Plaintiff could obtain up to **\$811,108** in liquidated damages.

¹ Pursuant to 28 U.S.C. § 604(a)(2), the Federal Court Management Statistics, March 2022, indicates that in the Central District of California, the median time from filing a civil action in federal court to trial is 23.5 months. (Whittemore Decl., ¶ 9; *see also* Defendant’s Request for Judicial Notice ¶ 9.) Defendant requests that the Court take judicial notice of these facts pursuant to Federal Rule of Evidence 201.

34. **Emotional Distress Damages:** Plaintiff also seeks special damages and damages associated with “emotional injuries” in an unspecified amount to be proven at trial. (Whittemore Decl., ¶ 2, Exhibit A, ¶¶ 21, 27, 34, 41, 54, 66, 72, 78, 83 and Prayer for Relief, ¶ 1.)

35. Emotional distress damages may be considered when calculating the amount in controversy even where not clearly pled in the complaint. Importantly, “a defendant does not need to show that cases are factually similar [but rather] **only that the cases are ‘analogous,’ which [courts have] interpret[ed] to mean involving the same cause of action.** *Saldana v. Home Depot USA, Inc.*, 2016 U.S. Dist. LEXIS 80064, at *9 (E.D. Cal. June 20, 2016); *Simmons v. PCR Tech.*, 209 F.Supp.2d 1029, 1033 (N.D. Cal. 2002) (“The fact that the cited cases involved distinguishable facts is not dispositive . . . [because] the jury verdicts in [the cited] cases amply demonstrate the potential for large punitive damage awards in employment discrimination cases”).

36. Defendant vigorously denies Plaintiff’s allegations. However, if Plaintiff were to prevail, an award for emotional damages alone could exceed the \$75,000 jurisdictional minimum. *See e.g.*, Defendant’s Request for Judicial Notice (“RJN”), Exh. 1, *Eun Joo Ko v. Square Grp., LLC dba The Square Supermarket*, Case No. BC487739 (Cal. Super. Ct. June 16, 2014) (**\$125,000** in emotional distress damages for wrongful termination); RJN, Exh. 2, *Juarez v. Autozone Stores, Inc.*, 2014 WL 7017660 (S.D. Cal. 2014) (jury verdict of \$250,000 for pain and suffering in discrimination case); RJN, Exh. 3, *Kolas v. Access Bus. Grp. LLC*, Case No. BC364232 (Cal. Super. Jan. 14, 2008) (**\$200,000** in emotional distress damages for wrongful termination claim); RJN, Exh. 4, *Kimberly Landis v. Pinkertons, Inc.*, 122 Cal.App.4th 985, 988 (2004) (**\$275,000** emotional distress damages awarded in wrongful termination case).

37. **Punitive Damages:** Plaintiff further alleges “Defendants’ unlawful actions were intentional, willful, malicious, and/or done with reckless disregard” of her rights and, thus, she is entitled to punitive damages. (Whittemore Decl., ¶ 2, Exh. A, ¶¶ 22, 28, 35, 42, 55, 67, 73, 79, 84 Prayer for Relief ¶ 2.) Although Defendant vigorously denies

1 Plaintiff's allegations, and certainly denies that an award of punitive damages would be
2 appropriate, Plaintiff's request for punitive damages must be taken into account in
3 ascertaining the amount in controversy. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th
4 Cir. 2001); *Campbell v. Hartford Life Ins. Co.*, 825 F.Supp.2d 1005, 1008 (E.D. Cal.
5 2011).

6 38. To establish the amount in controversy, particularly with respect to punitive
7 damages, a defendant may rely on jury verdicts in cases involving similar facts.
8 *Simmons*, 209 F.Supp.2d at 1033; *Kroske*, 432 F.3d at 980. Notably, the facts of
9 "comparator cases" relied upon by a removing defendant do not require identical facts
10 and need not quantify an exact value of damages. *See Mejia v. Parker Hannifin Corp.*,
11 2018 WL 582325, at *3 (C.D. Cal. 2018) ("Overall, district courts appear to require only
12 "analogous" or even "similar" exemplified, not identical cases."); *Castillo v. ABM Indus.*,
13 *Inc.*, 2017 WL 5609791, at *3 (C.D. Cal. 2017 (same)); *Castle v. Lab. Corp. of Am.*, 2017
14 WL 2111591, at *4 (C.D. Cal. 2017) (same).

15 39. Therefore, here, if Plaintiff is able to prove her claims at trial, it is
16 reasonable to conclude that she will seek, and a jury could award, in excess of \$75,000
17 solely for punitive damages. *See* RJN, Exh. 5, *Navarro v. 4Earth Farms, Inc. et al.*, 2019
18 Cal.App.Unpub. LEXIS 986, at *11 (2019) (award of **\$100,000** in punitive damages in
19 disability discrimination and wrongful termination case); RJN, Exh. 6, *Tapia v. San*
20 *Gabriel Transit, Inc.*, Case No. BC482433 (Cal. Super. Ct. Nov. 16, 2015) (awarding
21 **\$400,000** in punitive damages in discrimination and wrongful termination case).

22 40. **Attorney's Fees**: Plaintiff also seeks attorneys' fees pursuant to Title VII of
23 the Civil Rights Act of 1964, California Government Code section 12965(b), and
24 California Labor Code sections 218.5 and 1194. (Whittemore Decl., Exh. A, ¶¶ 23, 29,
25 36, 43, 56, 68, 74, 91 Prayer for Relief ¶ 3.)

26 41. It is appropriate to consider post-removal attorneys' fees in calculating the
27 amount in controversy. *See Chavez*, 88 F.3d at 417; *Lucas v. Michael Kors (USA), Inc.*,
28 No. 2018 WL 2146403, at *11 (C.D. Cal. 2018); *Bernstein v. BMW of N. Am., LLC*, 2018

1 WL 2210683, at *2 (N.D. Cal. 2018.)

2 42. Here, Defendant's counsel reasonably estimates that attorneys' fees alone
3 will exceed the sum of \$75,000 through trial, if Plaintiff were to prevail. (Whittemore
4 Decl., ¶ 8.) Defendant's attorney, Elisabeth F. Whittemore, has represented employers in
5 employment litigation for approximately six years in California and is familiar with fees
6 awarded to plaintiff's counsel in similar actions filed in California and federal court. (*Id.*)
7 Based on Ms. Whittemore's experience and Plaintiff's allegations, it would be reasonable
8 to expect that attorneys' fees alone in this case will exceed the sum of \$75,000 through
9 trial. *Id.*; see also e.g., RJN, Exh. 7, *Lave v. Charter Comms. LLC*, 2020 Cal.App.Unpub.
10 LEXIS 8483, at *1, *8, *27, *32 (2020) (plaintiff awarded **\$400,800** in attorneys' fees for
11 disability discrimination, failure to prevent discrimination, failure to accommodate, and
12 wrongful termination); RJN, Exh. 8, *Perry v. eGumball, Inc.*, Case No. 30-2013-
13 00692868-CU-WT-CJC (Cal. Super. Ct. Jun. 18, 2015) (ordering payment of reasonable
14 attorney fees, with the plaintiff's counsel claiming fees in excess of **\$1 million**).

15 43. Accordingly, Plaintiff's demand for lost wage damages, emotional distress
16 damages, punitive damages, and attorneys' fees combined show that the amount "at
17 stake" exceeds the \$75,000 jurisdictional threshold. *Anthony v. Sec. Pac. Fin. Servs., Inc.*,
18 75 F.3d 311, 315 (7th Cir. 1996); *Watson v. Blankinship*, 20 F.3d 383, 386–87 (10th Cir.
19 1994).

20 44. For the foregoing reasons, this Court has original jurisdiction pursuant to 28
21 U.S.C. section 1331 and 1332, supplemental jurisdiction of Plaintiff's state law claims
22 under 28 U.S.C. section 1367(a), and this action may be removed by Defendant to this
23 Court pursuant to 28 U.S.C. section 1441 based on diversity jurisdiction.

24 **VI. NOTICE TO COURT AND PARTIES**

25 45. Contemporaneously with the filing of this Notice of Removal in the United
26 States District Court for the Central District of California, written notice of the removal
27 will be given by the undersigned to counsel for Plaintiff and a copy of this Notice of
28 Removal will be filed with the Clerk of the Superior Court for the State of California,

County of Los Angeles.

46. This Notice of Removal is signed by Defendant's counsel pursuant to Rule 11 of the Federal Rules of Civil Procedure.

VII. CONCLUSION

47. Based on the foregoing, Defendant removes this action to this Court pursuant to the provisions of 28 U.S.C. §§ 1331 and 1441, *et seq.* because the action arises, at least in part, under federal law and pursuant to the provisions of 28 U.S.C. §§ 1332 and 1441, *et seq.* because the action arises between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

48. Defendant therefore may remove this State Court Action to this Court pursuant to 28 U.S.C. section 1441. Defendant respectfully requests that this Court exercise its removal jurisdiction over this entire action under 28 U.S.C. sections 1331, 1332, 1367, 1441(a) and 1441(b).

Dated: June 15, 2022

JACKSON LEWIS P.C.

By: /s/ Jeremy D. Lewis

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